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9 Attorneys for Yerba Buena Engineering &
10 Construction, Inc. and Travelers Casualty and
11 Surety Company of America

12 **UNITED STATES DISTRICT COURT**
13 **NORTHERN DISTRICT OF CALIFORNIA**

14 **UNITED STATES OF AMERICA, FOR**
15 **THE USE OF AAA RESTAURANT FIRE**
16 **CONTROL, INC., DOING BUSINESS AS**
17 **AAA FIRE PROTECTION SERVICES;**
18 **AND AAA RESTAURANT FIRE**
19 **CONTROL, INC.,**

20 **Plaintiffs,**

21 **v.**

22 **YERBA BUENA ENGINEERING &**
23 **CONSTRUCTION, INC., a California**
24 **corporation; TRAVELERS CASUALTY**
25 **AND SURETY COMPANY OF**
26 **AMERICA, a Connecticut corporation, and**
27 **DOES 1 TO 100 inclusive,**

28 **Defendants.**

No. CV 07 5912 JL

NOTICE OF FILING OF
ADMINISTRATIVE MOTION TO
CONSIDER WHETHER CASES SHOULD
BE RELATED PURSUANT TO LOCAL
RULE 3-12

Complaint file: November 21, 2007

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1 On February 7, 2008, defendant Yerba Buena Engineering & Construction, Inc. filed an
2 Administrative Motion to Consider Whether Cases Should be Related. Attached hereto as
3 Exhibit A is a true and correct copy of said motion.

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5 Date: February 7, 2008

McInerney & Dillon, PC

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8 Neil H. Bui

9 Attorneys for Yerba Buena Engineering & Construction,
10 Inc. and Travelers Casualty and Surety Company of
11 America
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PROOF OF SERVICE

I declare that I am employed in the County of Alameda, California. I am over the age of 18 years and not a party to the within action; my business address is McInerney & Dillon, P.C., 1999 Harrison Street, Suite 1700, Oakland, California 94612-4700.

On the date last written below, I served the following documents:

NOTICE OF FILING OF ADMINISTRATIVE MOTION TO CONSIDER WHETHER CASES SHOULD BE RELATED PURSUANT TO LOCAL RULE 3-12

By placing true and correct copies thereof:

X By Electronic Mail. Based on a court order or an agreement of the parties to accept service by e-mail or electronic transmission, I caused the documents to be sent to the persons, through [LexisNexis Corporation/the Court's ECF-PACER webpage/or other internet service provider], in which counsel below are registered to receive e-mail at the e-mail addresses listed below. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

ADDRESSEES

Lawrence E. Smith
Centerpoint Building
18 Crow Canyon Court, Ste. 205
San Ramon, California 94583

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated: February 15, 2008


Ollye L. Robinson

1 Timothy F. Winchester (SBN 54826)
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12 **UNITED STATES DISTRICT COURT**
13 **NORTHERN DISTRICT OF CALIFORNIA**

14 **UNITED STATES, FOR THE USE OF**
15 **FERGUSON FIRE & FABRICATION,**
16 **INC.,**

17 **Plaintiff,**

18 **v.**

19 **YERBA BUENA ENGINEERING &**
20 **CONSTRUCTION, INC., a California**
21 **corporation; TRAVELERS CASUALTY**
22 **AND SURETY COMPANY OF**
23 **AMERICA, a corporation,**

24 **Defendants.**

) **No. C 07-04294 WDB**

) **ADMINISTRATIVE MOTION TO**
) **CONSIDER WHETHER CASES SHOULD**
) **BE RELATED PURSUANT TO LOCAL**
) **RULE 3-12**

) **Complaint filed: August 21, 2007**

25 **I. Introduction**

26 1. Pursuant to Local Rules 3-12 and 7-11, Yerba Buena Engineering &
27 Construction, Inc. ("Yerba Buena"), defendant in the case of *AAA Restaurant Fire Control v.*

1 *Yerba Buena Engineering, et al.*, Case No. CV 07 05912 JL (the “AAA Action”), moves for
2 an examination by this Court to determine whether the AAA Action and the action of
3 *Ferguson Fire and Fabrication v. Yerba Buena Engineering, et al.*, Case No. C 07-04294
4 WDB (the “Ferguson Action”), should be considered “related cases” within the meaning of
5 Local Rule 3-12.

6 II. Discussion

7 2. Yerba Buena, as general contractor, contracted with the United States Park
8 Services (Public Contract No. 8147050044) to perform certain construction work on the public
9 work of improvement commonly known as the Alcatraz Island Fire Protection Improvement
10 Project (the “Project”). Yerba Buena subcontracted with AAA Restaurant Fire Control, Inc.
11 (“AAA”), for AAA to provide materials and services for, among other things, the installation
12 of fire sprinklers on the Project. AAA subcontracted with Ferguson Fire & Fabrication, Inc.
13 (“Ferguson”) for Ferguson to provide materials to AAA for installation on the Project.

14 3. Travelers Casualty and Surety Company of America (“Travelers”) provided
15 Payment Bond No. 104611873 (the “Payment Bond”) to the Project for its principal, Yerba
16 Buena.

17 4. On or about August 21, 2007, Ferguson filed this Miller Act complaint on the
18 Payment Bond against Yerba Buena and Travelers. The action relates entirely to materials
19 Ferguson supplied to AAA for the Project and the Payment Bond provided by Travelers. On
20 or about November 8, 2007, dismissal was entered in this action.

21 5. On or about November 21, 2007, AAA filed a Miller Act complaint on the
22 Payment Bond, also against Yerba Buena and Travelers. This action relates entirely to the
23 alleged work and materials provided by AAA to the Project. AAA also asserts a cause of
24 action for breach of contract and negligence.

25 6. Both the Ferguson Action and the AAA Action involve substantially the same
26 parties as both actions name only Yerba Buena and Travelers as defendants.

1 7. Both the Ferguson Action and the AAA Action involve work and materials
2 provided to the same project, the Alcatraz Island Fire Improvement Project.

3 8. Both the Ferguson Action and the AAA Action make a claim against the same
4 Payment Bond provided by Travelers to the Project.

5 9. Both actions may involve significantly the same evidence in the form of
6 documents and deposition as they pertain to the scope of work of AAA and materials supplied
7 by AAA and/or Ferguson to the Project.

8 III. Conclusion

9 10. Yerba Buena Engineering & Construction, Inc., therefore respectfully requests
10 that this Court make a determination that the case of *AAA Restaurant Fire Control v. Yerba*
11 *Buena Engineering, et al.*, Case No. CV 07 05912 JL (the "AAA Action") and the case of
12 *Ferguson Fire and Fabrication v. Yerba Buena Engineering, et al.*, Case No. C 07-04294
13 WDB, are "related cases" within the meaning of Local Rule 3-12.

14
15 Date: February 7, 2008

McInerney & Dillon, PC

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17 

18 Neil H. Bui

19 Attorneys for Yerba Buena Engineering & Construction,
20 Inc. and Travelers Casualty and Surety Company of
21 America

PROOF OF SERVICE

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On the date last written below, I served the following documents:

**ADMINISTRATIVE MOTION TO CONSIDER WHETHER CASES SHOULD BE
RELATED PURSUANT TO LOCAL RULE 3-12.**

By placing true and correct copies thereof:

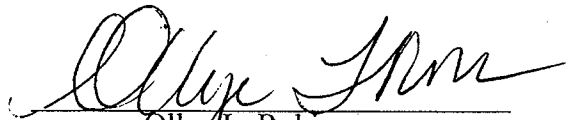
X By Electronic Mail. Based on a court order or an agreement of the parties to accept service by e-mail or electronic transmission, I caused the documents to be sent to the persons, through [LexisNexis Corporation/the Court's ECF-PACER webpage/or other internet service provider], in which counsel below are registered to receive e-mail at the e-mail addresses listed below. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

ADDRESSEES

Dana Sykulski
George Sykulski
16027 Ventura Boulevard, Suite 503
Encino, CA 91436

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated: February 15, 2008


Ollye L. Robinson

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14 **UNITED STATES, FOR THE USE OF**
15 **FERGUSON FIRE & FABRICATION,**
16 **INC.,**

17 **Plaintiff,**

18 **v.**

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21 **corporation; TRAVELERS CASUALTY**
22 **AND SURETY COMPANY OF**
23 **AMERICA, a corporation,**

24 **Defendants.**

) **No. C 07-04294 WDB**

) **[PROPOSED] ORDER REGARDING**
) **ADMINISTRATIVE MOTION TO**
) **CONSIDER WHETHER CASES SHOULD**
) **BE RELATED**

) **Complaint filed: August 21, 2007**

25
26 Upon due consideration of the submissions of the parties, and in accordance with the
27 standards set forth in Rule 3-12, the Court finds:

1 1. That the action entitled *AAA Restaurant Fire Control v. Yerba Buena*
2 *Engineering, et al.*, Case No. CV 07 05912 JL is related to this present action within the
3 meaning of Civil L.R. 3-12(a). Accordingly, *AAA Restaurant Fire Control v. Yerba Buena*
4 *Engineering, et al.*, Case No. CV 07 05912 JL shall be reassigned to the undersigned Judge
5 pursuant to Civil L.R. 3-12(g).

6 2. That the action entitled *AAA Restaurant Fire Control v. Yerba Buena*
7 *Engineering, et al.*, Case No. CV 07 05912 JL, is not related to this present action within the
8 meaning of Civil L.R. 3-12(a). Accordingly, no change in case assignment will be made.

9 **IT IS SO ORDERED.**

10
11 DATED: _____

Honorable Wayne D. Brazil
United States District Judge

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**[PROPOSED] ORDER REGARDING ADMINISTRATIVE MOTION TO
CONSIDER WHETHER CASES SHOULD BE RELATED.**

By placing true and correct copies thereof:

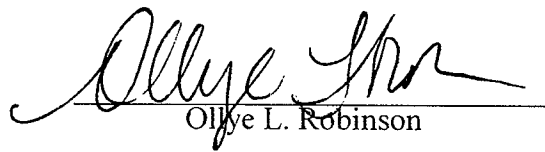
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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated: February 15, 2008


Ollie L. Robinson